

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRICE CHANGES

Docket No. CP2022-22

**USPS MOTION FOR CLARIFICATION OF
COMMISSION ORDER NO. 6071**
(January 19, 2022)

The United States Postal Service hereby moves for clarification of Commission Order No. 6071 (December 21, 2021), specifically with regard to Ordering Paragraphs Nos. 3 and 4. Ordering Paragraph No. 3 requires the Postal Service to file volume and revenue data for USPS Connect Local on a quarterly basis. The Postal Service already files such data with our quarterly competitive billing determinants and plans to do so for the USPS Connect Local price category. Therefore, the Postal Service respectfully requests clarification as to whether the duplicative effort of filing quarterly reports in the instant docket would be necessary.

Ordering Paragraph No. 4 seemingly requires that future proposed classification changes within the context of an annual competitive price change case be filed in an accompanying Mail Classification (MC) docket. Specifically, the Commission's analysis of classification changes in Order No. 6071 (at pages 8-10) relies on 39 U.S.C. § 3642 and implies that *all* such classification changes must be evaluated under section 3642, rather than just product additions and deletions. The Postal Service respectfully submits that this directive is unsupported by the plain language of Title 39 and associated regulations, and is contrary to years of sound Commission precedent. For

that reason, we seek clarification of the import of that language and how it aligns with established Commission precedent.

Summary of Order No. 6071

Commission Order No. 6071, which was issued on December 21, 2021, favorably reviewed the Postal Service's price and classification changes in Docket No. CP2022-22. In pertinent part, the Order found "the new competitive prices and proposed MCS language incorporating the new prices comply with 39 U.S.C. § 3633(a)." The Postal Service's prices and classification changes took effect on January 9, 2022. To be clear, the Postal Service does not take issue with the Commission's analysis of our competitive price changes and their compliance with the section 3633(a) criteria. However, the Postal Service respectfully submits that the Commission appears to have painted with too broad of a brush by over-relying on section 3642 in its analysis of the Postal Service's classification changes, and for that reason, the direction set forth in Ordering Paragraph 4 should be clarified.

Background of Classification Changes in Competitive Price Filings

Consistent with over a decade of past practice, and in accordance with Commission Order No. 1062 (December 21, 2011), the Postal Service summarized a handful of classification changes in our initial Notice in this docket. Order No. 1062 requires that "explanations of all new products or price categories should also be included in the Postal Service's initial notice of its competitive price adjustments." Order

No. 1062 clearly contemplates that new price categories or similar classification changes can be introduced in the context of an annual competitive price change case.¹

The Postal Service has consistently cited and complied with Order No. 1062 in our competitive price change filings since 2011, as we did in the instant docket. Throughout that same time period, the Postal Service has continued to file our competitive price change cases, which have included numerous classification changes, using only the Competitive Products (CP) docket designation, and without a concurrent Mail Classification (MC) docket. The Commission has never directed that the Postal Service's classification changes in the context of a competitive price change case be presented in separate dockets under section 3642 or the Commission's corresponding mail classification rules of practice.

The Postal Service's classification changes in the instant docket are not materially different than the classification changes included in prior annual competitive price change cases. Over the years, the Postal Service has introduced numerous new initiatives, new price categories, new fees, or eliminated or consolidated other price categories to simplify and streamline our offerings.² The following is a summary of just

¹ The Postal Service has long interpreted the use of the term "products" in Order No. 1062 as generally referring to new "initiatives" or "offerings" that may be introduced. The Postal Service does not contend that Order No. 1062 gives the Postal Service authority to circumvent 39 U.S.C. § 3642 by introducing, removing, or transferring new "products" within the accepted meaning of that term (i.e. those competitive products listed in the Mail Classification Schedule Section 2000, Competitive Products List) in a competitive price change case. For example, the Postal Service would not seek to eliminate Parcel Select in a price change filing without pursuing a section 3642 case, but has in the past eliminated or introduced new *price categories* under the Parcel Select product in its competitive price change cases. See, e.g., Docket No. CP2016-9.

² It is worth noting that being able to combine annual competitive price changes with certain classification changes to introduce or eliminate new offerings, services, or fees provides the Postal Service and the Commission with one efficient vehicle to analyze and publicize all relevant changes to the postal community. This, in turn, helps to provide the Postal Service's customers with clear, consistent information about new initiatives and prices each year.

a few of the many classification changes that have been included in prior competitive price change cases:

- Oversize Fee introduced for multiple products (Docket No. CP2021-28)
- Unmanifested Fee introduced for multiple products, Premium Data Retention and Retrieval service introduced (Docket No. CP2020-5)
- First-Class Package Service (FCPS) restructured to zone-based pricing, Premium Forwarding Service (PFS) – Local price category introduced (Docket No. CP2019-3)
- New flat rate tray price category for PFS – Commercial introduced, TIGER/ZIP+4 offering eliminated (Docket No. CP2017-20)
- Parcel Select Lightweight machinable and irregular tables consolidated, Regional Rate Box C, Critical Mail, Priority Mail Express Flat Rate Boxes, and various FCPS, Parcel Select, and Parcel Return Service price categories eliminated (Docket No. CP2016-9)
- Parcel Return Service – Full Network price category eliminated (Docket No. CP2015-33)
- PFS-Commercial, and Commercial Base/Commercial Plus categories introduced for PMEI/PMI products (Docket No. CP2014-5)
- Parcel Return Service – Full Network and First-Class International Package Service introduced (Docket No. CP2013-3)
- Package Intercept service introduced, Priority Mail Open & Distribute introduced, Priority Mail Express Flat Rate Box introduced (Docket No. CP2012-2)

In some of these instances, the Commission described such classification changes as “significant”³; in all of these instances, the Commission favorably reviewed the changes under section 3633 and associated regulations, and did not require a parallel filing under section 3642.

Request for Clarification

It is unclear to the Postal Service why Commission Order No. 6071 breaks with long-established and well-reasoned precedent and analyzes the Postal Service’s classification changes under 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130 *et seq.*, rather than 39 U.S.C § 3633, 39 C.F.R. §§ 102 and 104, and Commission Order No. 1062. Even the statement in Order No. 6071 that purports to remind the Postal Service of the directive⁴ cites no prior precedent. The Postal Service has undertaken to review the Commission’s orders in all previous competitive price change cases following Order No. 1061 and found that this instance is the first time classification changes have been analyzed under a separate statutory and regulatory scheme from the proposed competitive price changes.⁵

One possibility for harmonizing Order No. 6071’s new directive with the years of established precedent following Order No. 1062 is that the Order No. 6071 directive pertains only to product-level changes, such as additions and deletions, while the classification changes that the Commission has accepted in price cases for the last decade are below the product level. This interpretation is suggested by the

³ See Order No. 2814 at page 10, Docket No. CP2016-9 (November 13, 2015)

⁴ See Order No. 6071 at page 9, Docket No. CP2022-22 (December 21, 2022) (“The Commission *reminds* the Postal Service that future proposed classification changes should be filed in an accompanying Mail Classification docket...”) (emphasis added)

⁵ Order No. 6071 appears to be the first time section 3642 was even cited in this context.

Commission's apparent evaluation of USPS Connect Local offering as a new "product" rather than a new price category under the Parcel Select product as we intended. If that is the sense in which Order No. 6071's directive is intended, confirmation from the Commission of such limitation would be useful. Otherwise, the new directive would be wholly inconsistent with the last decade's worth of precedent permitting classification changes in competitive price cases.

In this vein, the Postal Service acknowledges that USPS Connect Local was uniquely highlighted in its filing and in certain media communications, as it is an important component of the Postal Service's "Delivering for America" plan, and therefore the conflation of USPS Connect Local with a product is understandable. However, it remains that an initiative's strategic importance, or more marketable name, or related media communications do not fundamentally alter the classification of the product or the statutory or regulatory scheme by which it should be analyzed. As reflected in the Mail Classification Schedule (MCS) language, USPS Connect Local is a new *price category* within the Parcel Select product. From a classification perspective, it is not functionally different than the Parcel Select DDU, DSCF, or DNDC offerings, or numerous other price categories under other products, even those with unique characteristics or requirements (e.g. Priority Mail Commercial Plus, or Priority Mail Express Commercial Plus).⁶

In accordance with Order No. 1062, the Postal Service made no assertion in our initial filing that we were seeking to add USPS Connect Local as a new product on the competitive product list in Section 2000 of the MCS. We did not make such a

⁶ Order No. 6071 appears to recognize as much where it notes that USPS Connect Local is "a derivative of the Parcel Select product," which would seem to confirm that USPS Connect Local does not constitute the introduction of a new "product" subject to Section 3642.

demonstration because, as a rate category, USPS Connect Local (or, for that matter, any of the other classification changes in this case) is not within the scope of section 3642. Further, in reviewing the intervenor comments and Commission inquiries in this case, it appears that no party considered section 3642 to be applicable to this case until Order No. 6071 was issued.

In sum, Order No. 6071 does not explain how section 3642 applies to the classification changes in this case, nor how the Order's directive comports with long-established Commission precedent. Accordingly, the Postal Service moves for clarification of the Order. As noted above, the Postal Service would respectfully suggest that, consistent with past practice, the Postal Service's classification changes that are included in a competitive price change case should continue to be reviewed under the lens of 39 U.S.C § 3633, 39 C.F.R. §§ 102 and 104, and Commission Order No. 1062, so long as they do not constitute product-level additions or deletions. Product-level changes, on the other hand, would appropriately be reviewed under section 3642. That approach has worked well for the Postal Service, the Commission, and the broader postal community, and there is no compelling reason to deviate from that well-reasoned approach. As noted at the outset, the Postal Service also seeks clarification that the quarterly competitive products billing determinants will suffice for the Commission's continuing review of USPS Connect Local's volume and revenue results.

Respectfully submitted,

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January 19, 2022